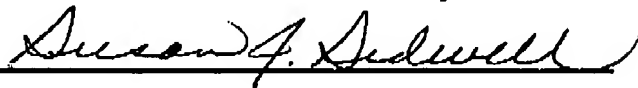


DAIMLERCHRYSLER

DaimlerChrysler  
Intellectual Capital CorporationRECEIVED  
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JAN 13 2005**Fax****To:** Examiner Hilary L. Gutman**From:** Gordon K. Harris, Reg. No. 28,615**Fax:**  
(703) 872-9306**Pages:** 7 + 2 (Appendix)**Phone:** (703) 305-0496**Date:** January 13, 2005**Group Art Unit:** 3612**Re:** Application No. 10/646,188

See the attached: Transmittal Form; Fee Transmittal; and APPEAL BRIEF.

*I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (703) 872-9306) on January 13, 2005.*Susan J. Sidwell

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PTO/SB/21 (08-00)

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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<b>TRANSMITTAL FORM</b> (to be used for all correspondence after initial filing)	Application Number	10/646,188
	Filing Date	August 22, 2003
	First Named Inventor	Rhodes, et al.
	Group Art Unit	3612
	Examiner Name	Hilary L. Gutman
Total Number of Pages in This Submission	Attorney Docket Number	708441US5

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request (one month) <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) (in Triplicate) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): → return receipt postcard ←
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney/Agent Name	Gordon K. Harris, Jr.
		Reg. No.	28,615
Signature			
Date	January 13, 2005		

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Appeal Brief – Patents; Commissioner for Patents, PO Box 1450, Alexandria VA 22313-1450			
Typed or printed name	Susan J. Sidwell		
Signature		Date	

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**FEE TRANSMITTAL  
for FY 2001**

Patent fees are subject to annual revision.

**TOTAL AMOUNT OF PAYMENT** (\$) 500**Complete if Known**

Application Number	10/848,188
Filing Date	August 22, 2003
First Named Inventor	Rhodes et al.
Examiner Name	Hilary L. Gutman
Group / Art Unit	3612
Attorney Docket No.	708441US5

METHOD OF PAYMENT (check one)		FEE CALCULATION (continued)																																																																																																																																																		
<b>1. <input checked="" type="checkbox"/></b> The Commissioner is hereby authorized to charge indicated fees and credit any over payments to: Deposit Account Number: 03-1800 Deposit Account Name: DaimlerChrysler Intellectual Capital Corporation <input checked="" type="checkbox"/> Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 <input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		<b>3. ADDITIONAL FEES</b> <table border="1"> <thead> <tr> <th>Fee Code</th> <th>Large Entity Fee (\$)</th> <th>Small Entity Fee (\$)</th> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>105</td><td>130</td><td>205</td><td>65</td><td></td></tr> <tr><td>127</td><td>50</td><td>227</td><td>25</td><td></td></tr> <tr><td>139</td><td>130</td><td>139</td><td>130</td><td></td></tr> <tr><td>147</td><td>2,520</td><td>147</td><td>2,520</td><td></td></tr> <tr><td>112</td><td>920*</td><td>112</td><td>920*</td><td></td></tr> <tr><td>113</td><td>1,840*</td><td>113</td><td>1,840*</td><td></td></tr> <tr><td>115</td><td>110</td><td>215</td><td>55</td><td></td></tr> <tr><td>116</td><td>390</td><td>216</td><td>195</td><td></td></tr> <tr><td>117</td><td>890</td><td>217</td><td>445</td><td></td></tr> <tr><td>118</td><td>1,390</td><td>218</td><td>695</td><td></td></tr> <tr><td>128</td><td>1,890</td><td>228</td><td>945</td><td></td></tr> <tr><td>119</td><td>310</td><td>219</td><td>155</td><td></td></tr> <tr><td>120</td><td>340</td><td>220</td><td>155</td><td>600</td></tr> <tr><td>121</td><td>270</td><td>221</td><td>135</td><td></td></tr> <tr><td>138</td><td>1,510</td><td>138</td><td>1,510</td><td></td></tr> <tr><td>140</td><td>110</td><td>240</td><td>55</td><td></td></tr> <tr><td>141</td><td>1,240</td><td>241</td><td>620</td><td></td></tr> <tr><td>142</td><td>1,240</td><td>242</td><td>620</td><td></td></tr> <tr><td>143</td><td>440</td><td>243</td><td>220</td><td></td></tr> <tr><td>144</td><td>600</td><td>244</td><td>300</td><td></td></tr> <tr><td>122</td><td>130</td><td>122</td><td>130</td><td></td></tr> <tr><td>123</td><td>130</td><td>123</td><td>130</td><td></td></tr> <tr><td>128</td><td>180</td><td>128</td><td>180</td><td></td></tr> <tr><td>561</td><td>40</td><td>561</td><td>40</td><td></td></tr> <tr><td>146</td><td>710</td><td>248</td><td>355</td><td></td></tr> <tr><td>149</td><td>710</td><td>249</td><td>355</td><td></td></tr> <tr><td>179</td><td>710</td><td>279</td><td>355</td><td></td></tr> <tr><td>169</td><td>900</td><td>169</td><td>900</td><td></td></tr> </tbody> </table>		Fee Code	Large Entity Fee (\$)	Small Entity Fee (\$)	Fee Description	Fee Paid	105	130	205	65		127	50	227	25		139	130	139	130		147	2,520	147	2,520		112	920*	112	920*		113	1,840*	113	1,840*		115	110	215	55		116	390	216	195		117	890	217	445		118	1,390	218	695		128	1,890	228	945		119	310	219	155		120	340	220	155	600	121	270	221	135		138	1,510	138	1,510		140	110	240	55		141	1,240	241	620		142	1,240	242	620		143	440	243	220		144	600	244	300		122	130	122	130		123	130	123	130		128	180	128	180		561	40	561	40		146	710	248	355		149	710	249	355		179	710	279	355		169	900	169	900	
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\*or number previously paid, if greater; For Reissues, see above

SUBMITTED BY		Complete (if applicable)			
Name (Print/Type)	Gordon K. Harris, Jr.	Registration No. Attorney/Agent	28,615	Telephone	248-841-1600
Signature	<i>Gordon K. Harris, Jr.</i>	Date	January 13, 2005		

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Attorney Docket No. 706441US5

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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JAN 13 2005

Group Art Unit: 3612 )  
Examiner: Hilary L. Gutman )  
Serial No. 10/646,188 )  
Applicants: Rhodes et al. )  
Filed: August 22, 2003 )  
For: STADIUM STYLE MOTOR )  
VEHICLE SEAT )  
Attorney Docket No.: 706441US5 )

## APPEAL BRIEF

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is an appeal from the Final Rejection of Claims 1 and 3—9 under 35 U.S.C. §102 (b) in the Office Action mailed July 27, 2004.

**I. REAL PARTY IN INTEREST**

The real party in interest is DaimlerChrysler Corporation, a corporation organized and existing under the laws of the State of Delaware U.S.A., and having a principal place of business in Auburn Hills, Michigan, U.S.A.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences which would directly affect or be directly affected by or have a bearing on the Board's decision in the instant appeal.

### **III. STATUS OF THE CLAIMS**

Claims 1 and 3—9 are pending in this application. All pending claims have been rejected and are the subject of this Appeal. A copy of Claims 1 and 3—9 is set forth in the Appendix hereto.

### **IV. STATUS OF AMENDMENTS**

In response to an initial Office Action of April 13, 2004, Applicants filed an Amendment and Response Under 37 C.F.R. § 111 amending Claim 1 and canceling Claims 2 and 10—13.

In response to the Final Office Action of July 27, 2004, Applicants filed a Response After Final Rejection on October 5, 2004, with no further amendment to the pending claims. A Notice of Appeal was filed November 19, 2004.

### **V. SUMMARY OF THE INVENTION**

Applicants claim a seat assembly for a motor vehicle having a floor, the seat assembly including a tub disposed at least partially in the floor, at least one rear leg non-releasably secured to the floor of the vehicle and being pivotable to stow the seat assembly in the tub. The seat assembly also includes a seat back fixedly mounted on the at least one rear leg and at least one front leg releasably secured to the floor of the vehicle.

### **VI. ISSUE**

Whether or not Claims 1 and 3—9 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Cannera et al. (U.S. Patent No. 5,195,795).

## VII. GROUPING OF THE CLAIMS

Claims 1 and 3—9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Cannera et al., U.S. Patent No. 5,195,795. These claims stand or fall together.

## VIII. ARGUMENT

### The Rejection

Claims 1 and 3—9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cannera et al. Applicants respectfully traverse the Examiner's rejection of these claims. As discussed below, the Examiner has failed to state a prima facie case of anticipation under 35 U.S.C. § 102(b), because the cited Cannera et al. reference fails to set forth each and every limitation of the claimed invention, either explicitly or inherently. General Electric Co. v. Nintendo Co., 50 U.S.P.Q.2d 1910, 1915 (Fed. Cir. 1989).

The Cannera et al. reference fails to disclose "at least one front leg releasably secured to the floor of the vehicle," as called for in Applicants' independent Claims 1 and 8. Cannera's front leg 20 is clearly shown coupled to a floor of the vehicle at all times—either in a deployed seat position as shown in Fig. 2 or in a completely stowed seat position as shown in Fig. 4. Cannera makes no suggestion of making leg 20 releasable from the vehicle floor, nor does Cannera suggest that pin 88 (Fig. 5) is removable from yoke 84. The Examiner's assertion in the Final Rejection that "even if those members were permanently attached, that with enough force one could indeed detach the front leg from the floor" would render the terms "releasable" and "nonreleasable" as meaning the same thing. Accordingly, Applicants are entitled to a grant of a patent. General Electric Co., supra at 1915.

**IX. SUMMARY**

The rejection of Claims 1 and 3—9 under 35 U.S.C. §102(b) is in error. There is no disclosure in the art of record of Applicants' claimed invention. The Examiner has failed to state a *prima facie* case under 35 U.S.C. §102(b) and, accordingly, Applicants are entitled to a reversal of the Final Rejection of Claims 1 and 3—9 and the grant of a patent over the instant application.

Respectfully submitted,

Louis A. Rhodes, et al.

Dated: January 13, 2005

BY: 

Gordon K. Harris, Reg. No. 28,615  
Attorneys for Applicants

Ralph E. Smith  
DaimlerChrysler Intellectual Capital Corporation  
CIMS 483-02-19  
800 Chrysler Drive East  
Auburn Hills, Michigan 48326-2757  
Phone: (248) 944-6519